

- (1) Under K.S.A. 44-534a, the Appeals Board has the authority and jurisdiction to review disputed preliminary hearing findings pertaining to the issues of timely notice of accident.
- (2) The preliminary hearing Order of the Administrative Law Judge should be affirmed. Claimant alleges she injured her left shoulder on May 11, 1995 when she lifted a nursing home resident while working as a CNA for respondent. Shortly after the incident, claimant experienced shooting pains into the left side of her face, her neck, and down into her arms. Claimant reports all her fingers were numbed. At the preliminary hearing, claimant testified that within 20 minutes of the accident she notified her supervisor, Ruth Johnson, who squeezed claimant's shoulder and announced it was nothing more than a pulled muscle.

Claimant also testified she requested medical treatment from the respondent when she talked to Tammy Suddeth, respondent's human resource director. Claimant believes this conversation took place on or about May 19 or May 20 after she had consulted her own doctor. Claimant also testified she told her husband, who was also one of her supervisors, about her shoulder injury. In addition claimant testified she told co-employees Lori Wilcox, Bob Richardson, and Ann Hatfield about her shoulder injury.

By deposition, respondent presented the testimony of several of its employees. Ann Hatfield, who began working for respondent on May 15, 1995 as the director of nurses, testified her first two weeks working for respondent were hectic and that she does not recall claimant talking with her about an accident or injury. Ms. Hatfield cannot remember leaving a note for the human resources director in the latter part of May, stating that claimant had discussed with staff that she had hurt her shoulder. Lori Wilcox, a charge nurse responsible for a different unit than where claimant worked, testified that claimant told her that she had hurt her back but an incident report had not been prepared. Ms. Wilcox advised claimant to see her own charge nurse to complete an incident report. Ms. Wilcox believes this conversation occurred sometime between May 15 and May 29, 1995, claimant's last day at work. Robert Richardson testified that claimant spoke to him in casual conversation about an injury during sometime in May. Although he cannot recall the conversations with any greater specificity, he believes claimant talked to him about injuries she received from her pet cougar. As respondent's resident assessment coordinator, Mr. Richardson was in a supervisory position over claimant. Ruth Johnson, a charge nurse and claimant's immediate supervisor on the date of the alleged accident, testified she does not recall claimant telling her about a shoulder injury and does not recall squeezing claimant's shoulder and telling her she had a pulled muscle. However, Ms. Johnson testified that claimant did work under a light duty restriction at some point in time, but she does not recall by whom or why the restriction was placed upon claimant. Finally, respondent's human resources director, Tammy Suddeth, testified she learned of claimant's accident when the director of nurses, Ann Hatfield, gave her a Post-it note at the end of May. Ms. Suddeth testified she first learned of claimant's alleged accident when she telephoned claimant on May 30.

Based upon the above evidence, the Administrative Law Judge found that claimant had failed to provide timely notice of accident as required by K.S.A. 44-520. The evidence regarding notice of accident was conflicting. The Administrative Law Judge did not accept claimant's version of the facts. Because the Administrative Law Judge personally observed claimant testify and was able, therefore, to assess her demeanor and credibility, in this instance the Appeals Board will give some deference to the Judge's findings. Based upon the evidence presented to date, the Appeals Board adopts the findings of the Administrative Law Judge that claimant failed to provide respondent notice of accident within ten days of its alleged occurrence and that she has also failed to prove that just cause existed to excuse the failure to provide notice within the required ten-day period.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Floyd V. Palmer entered in this proceeding on November 13, 1995 should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Jan L.Fisher, Topeka, KS  
Derek J. Shafer, Topeka, KS  
Floyd V. Palmer, Administrative Law Judge  
Philip S. Harness, Director